



Alex Chartove  
Morrison & Foerster LLP  
1650 Tysons Blvd., Suite 300  
McLean, VA 22102

**MAILED**

**SEP 12 2006**

**CENTRAL REEXAMINATION UNIT**

In re Application of :  
William H. Kump :  
Application No. 09/379,051 : DECISION TERMINATING  
Filed: August 23, 1999 : REISSUE PROCEEDING  
Title: SEALED LEAD-ACID CELLS AND :  
BATTERIES HAVING AN EXPANDABLE COVER :

This is a decision terminating the instant reissue proceeding based on (1) the expiration of U.S. Patent No. 5,660,946, for which the present application requests reissue, and (2) the failure of applicant to respond to the Order To Show Cause mailed July 18, 2006.

### **BACKGROUND**

*(Redrafted from the Order To Show Cause)*

1. The present application ("present reissue proceeding") was filed August 23, 1999, for reissue of U.S. Patent No. 5,660,946 (the '946 patent), which issued August 26, 1997.
2. The Office's financial records reveal that the 7.5 year maintenance fee due and not paid could have been paid during the period from August 26, 2004, through February 28, 2005 (February 26, 2005, was a Saturday), or with a surcharge during the period from February 28, 2005 (February 26, 2005, was a Saturday) through August 26, 2005.
3. The Office records reveal that the '946 patent has expired on August 26, 2005, for failure to pay the 7.5 year maintenance fee<sup>1</sup>. See 1299 *Official Gazette* 127 (October 25, 2005).

### **DECISION**

A review of the record reveals that the time for filing a response to the Order To Show Cause has expired and there is no indication in the record that a response to the Order To Show Cause has

---

<sup>1</sup>Manual of Patent Examining Procedure § 2506 (8<sup>th</sup> ed. 2001) (Rev. 4 October 2005) states in part the following:

For example, if the grace period for paying a maintenance fee with a surcharge ended on a Saturday, the maintenance fee and surcharge could be paid on the next succeeding business day, e.g., Monday, but the patent will have expired at midnight on Saturday if the maintenance fee and surcharge were not paid on the following Monday. Therefore, if the maintenance fee and any applicable surcharge are not paid, the patent will expire as of the end of the grace period as listed above. A patent that expires for failure of payment will expire on the anniversary date the patent was granted in the 4th, 8th, or 12th year after the grant.

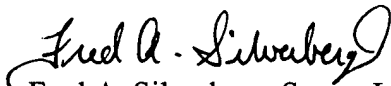
been filed. In addition, no petition addressing the failure to timely pay the 7.5 year maintenance fee has been filed. Therefore, the Director of the USPTO no longer has the authority under 35 U.S.C. 251 to reissue the '946 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993).

### CONCLUSION

1. The present reissue proceeding, application No. 09/379,051 is hereby terminated.
2. The present reissue proceeding, application No. 09/379,051 is being forwarded to Technology Center Art Unit 1745 for processing as an abandoned application.
3. Telephone inquiries related to this decision should be directed to Fred Silverberg, Senior Legal Advisor, at (571) 272-7719 or, in his absence to Kenneth M. Schor, Senior Legal Advisor, at (571) 272-7710.



Kenneth M. Schor  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner for Patent Examination Policy



Conferee: Fred A. Silverberg, Senior Legal Advisor